

Reference Number: DAERA/26-338
Request Details:
Correspondence to TOF-0132-2026



Department of
**Agriculture, Environment
and Rural Affairs**

An Roinn

**Talmhaíochta, Comhshaoil
agus Gnóthaí Tuaithe**

Department o'

**Fairmin, Environment
an' Kintra Matthers**

www.daera-ni.gov.uk

Northern Ireland Environment Agency
Waste and Industrial Regulation and
Enforcement Division

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08 June 2026

Dear ██████████

Environmental Information Regulation 2004

I refer to your request for information received by the Department on 08 May 2026 as copied in appendix A.

Under Regulation 12(4)(a) the Department is excepted from the duty to disclose the information on the grounds that the information sought is not held.

In section one you ask for a response to five questions that were previously answered in reply TOFF 0132-2026.

In section two the question references a hypothetical RPS, as such the department has no information with which to answer this question.

In section 4 an answer is requested for a hypothetical scenario, the department has no information with which to answer this question.

In section 5 you question the determination of the permit variation for P0610/23A, please be assured that the department determined this variation as required by The

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Pollution Prevention and Control (Industrial Emissions) Regulations (Northern Ireland) 2013.

If you require any clarification, believe that any part of your request has been overlooked, misunderstood or misinterpreted, please contact me in the first instance to see if it is a matter that can be resolved.

If you are unhappy with the manner in which your request for information has been handled or the decision to release/withhold information, you have the right to request a formal review by the Department. If you wish to do so, please contact The Review Section either by e-mailing daera.informationmanager@daera-ni.gov.uk or by post at The Department of Agriculture, Environment and Rural Affairs, Data Protection & Information Management Branch, Floor 2, Jubilee House, 111 Ballykelly Road, Ballykelly, Limavady BT49 9HP, within two months from the date of this letter.

If after such an internal review you are still unhappy with the response, you have the right to appeal to the Information Commissioner at Wycliffe House, Water Lane, Wilmslow, CHESHIRE SK9 5AF, who will undertake an independent review of the Department's decision.

Yours sincerely,

PPC Waste

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Appendix A

Your reference: TOF-0132-2026 (response of 6 May 2026 by Mr XXXXXXXXX)

Subject: Re-Gen Waste Ltd letter of 17 February 2026 — Request for a site-specific Regulatory Position Statement at Derryboy Road; inadequacy of the response of 6 May 2026;

constitutional, legal and transparency concerns; renewed request for a substantive Ministerial reply

Dear Minister,

I write further to my correspondence to you of 18 April 2026 concerning the letter of 17

February 2026 from Mr Joseph Doherty, CEO of Re-Gen Waste Ltd, asking you to secure the

issuance of a Regulatory Position Statement (RPS) to permit the temporary external storage

of residual waste at the Derryboy Road site "in advance of planning approval".

On 6 May 2026, a response under reference TOF-0132-2026 was issued not by you but by

Mr XXXXX XXXXXX, Head of Waste Permitting, NIEA. With respect, that response is inadequate in

form and in substance, and I write to set out why, to ask that you now reply personally to the

matters that were addressed to you personally, and to put on record a number of constitutional,

legal and transparency points that have, in my view, been left unaddressed.

1. The response is improperly delegated

Eight specific questions were put to you. A number of those questions were directed at you

personally, at your Private Office, at your Special Adviser, and at the policy position of the

Department under your direction. They cannot properly be answered by the Head of the Waste

Permitting Team, who is himself an official within the very team that would assess the RPS

request that is the subject of this correspondence.

In particular, the following questions could not properly be delegated:

- Question 1 — whether you, as Minister, regard direct approaches to a Minister on a live, site-specific permit application (made one day before the regulator's determination) as appropriate.
- Question 2 — whether you, your Private Office, your Special Adviser, or any official acting on your behalf has met or corresponded with Re-Gen, its advisers or its representatives about the DBR site, the Warrenpoint site, or a potential RPS in the last eighteen months. This is a question that engages your personal and your office's

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conduct, not the Waste Permitting Team's.

- Question 5 — whether you share the concern that ministerial issuance of an RPS shortly after a regulator's conditioned determination on the same site risks undermining

public and stakeholder confidence in the operational independence of the NIEA.

- Question 6 — whether the Department will introduce a published policy or protocol on

the handling of direct approaches by regulated operators to Ministers.

- Question 8 — whether you are satisfied that there is a sufficient evidential, environmental and legal basis for departing from the regulator's determination of 18 February 2026.

Each of these is a question of Ministerial conduct, Ministerial view, or Departmental policy

under your direction. None can be answered on your behalf by the Head of Waste Permitting.

I therefore ask that a personal Ministerial response is now provided to each of those five

questions.

2. The constitutional point: DAERA cannot lawfully issue this RPS unilaterally

Mr XXXXXX response to Question 3 is the most legally exposed line in the letter. It states:

"The department may issue Regulatory Position Statements (RPS) in specific, low risk, circumstances for unauthorised activities. Please contact your local planning department for any concerns regarding planning."

That statement, taken at its face value, asserts that DAERA has the unilateral power to issue

an RPS that would lawfully accommodate the storage of waste "in advance of planning approval" — i.e. an activity for which planning permission is required but has not been granted.

With respect, that position is constitutionally unsound.

2.1 The matter is cross-cutting under section 20(3) of the Northern Ireland Act 1998

Section 20 of the Northern Ireland Act 1998, read with paragraphs 19 and 20 of Strand One

of the Belfast Agreement, requires the Executive Committee to be a forum for the discussion

of, and agreement on, issues which cut across the responsibilities of two or more Ministers.

The Re-Gen request, by its own express terms, cuts across the responsibilities of:

- DAERA (you, as Minister) — environmental permitting, the Waste and Contaminated Land (NI) Order 1997, and the Pollution Prevention and Control (Industrial Emissions) Regulations (NI) 2013;

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- DfI (Minister Liz Kimmins MLA) — the Planning Act (NI) 2011 and the regional planning regime, the integrity of which would be directly affected by an RPS designed, on its face, to permit storage "in advance of planning approval";
- Newry, Mourne and Down District Council — the local planning authority for the Derryboy Road site, whose live planning function would be circumvented by the proposed mechanism.

The Court of Appeal in *Buick v Department for Infrastructure* [2018] NICA 26 held that an environmental and planning matter that engaged DAERA's waste interests and the Executive Office's interests was cross-cutting under section 20(3), and that ministerial decision without referral to the Executive Committee was unlawful. The Re-Gen RPS proposition is materially the same kind of matter, and a fortiori so because it would, by design, displace a live planning function vested in another Department and a local council.

2.2 The matter is significant and controversial under section 20(4)

Section 20(4) of the 1998 Act, as amended by the Executive Committee (Functions) Act

(Northern Ireland) 2020, requires the Executive Committee to discuss and agree any "significant or controversial" matter which is outside the scope of the Programme for Government in force. The proposal that DAERA should issue a site-specific RPS to enable

storage of residual waste in advance of planning approval, in respect of a named operator at

a named site, in the face of:

- a live planning application before NMDDC;
- documented residents' objections;
- an active regulatory determination by the NIEA at the same site (Permit P0610/23A/V2, 18 February 2026); and
- a parallel set of unresolved regulatory issues at the operator's Warrenpoint facility, is on any reasonable view both significant and controversial. Section 20(4) is therefore engaged.

2.3 Section 28A of the 1998 Act and the Ministerial Code

Section 28A of the 1998 Act provides, in terms, that a Minister has no Ministerial authority to

take any decision in contravention of a provision of the Ministerial Code. The Ministerial Code

requires Ministers to bring before the Executive Committee any matter that ought, by virtue of

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section 20(3) or (4), to be considered by it. A unilateral decision by you to issue, or to procure the issuance of, an RPS that would have the effect of authorising storage in advance of planning approval — without prior Executive Committee agreement — would, in my respectful submission, be a decision taken without Ministerial authority.

2.4 The Padfield principle

Independent of the Northern Ireland Act, the Padfield principle (*Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997) prevents a Minister from using a statutory power in a way that frustrates the policy and objects of the parent legislation. The use of an RPS — an instrument intended to clarify regulatory expectations within the waste permitting regime — to displace the operation of the planning regime in respect of a single operator at a single site would frustrate the policy of both the planning legislation and the waste regulation framework, and would be a paradigm Padfield abuse.

2.5 Summary

Mr XXXXXX bare assertion that "the department may issue Regulatory Position Statements" in these circumstances is therefore not a sufficient or constitutionally accurate answer. The proper position is that DAERA, acting alone, has no Ministerial authority to issue an RPS of the kind sought by Re-Gen. The matter is cross-cutting, significant and controversial, and falls to the Executive Committee under sections 20(3) and 20(4) of the Northern Ireland Act 1998.

I ask that this position is now confirmed in writing.

3. The Question 2 admission and the absence of transparency

Mr XXXXXX response to Question 2 confirms, in terms, that:

"The department has corresponded with Re-Gen during this time, there is no intention to add any of this information to the assembly library."

This is a material and significant disclosure. It confirms that there has been correspondence between the Department and Re-Gen Waste Ltd during the eighteen-month window covered by Question 2 — a window which spans both the Warrenpoint regulatory issues and the live Derryboy Road permit determination. It is unsatisfactory, in matters of this constitutional and

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public-interest weight, for the existence of such correspondence to be confirmed while its

content is withheld from the Assembly Library.

I ask, therefore, that you reconsider your position and lay before the Assembly Library:

1. A full log of all meetings, calls and correspondence between the Minister, the Private Office, the Special Adviser, or any official acting on behalf of any of them, on the one hand, and Re-Gen Waste Ltd, its directors, employees, advisers or representatives on the other, between 1 November 2024 and the date of this letter, in respect of the Derryboy Road site, the Warrenpoint site or any proposed Regulatory Position Statement;

2. Copies of the substantive correspondence itself, with appropriate redactions only as

required by data protection or commercial sensitivity (and with reasons given for any redaction);

3. Re-Gen's letter of 17 February 2026 and the Department's full response, when issued.

In the alternative, the request at paragraphs 3(1)–3(3) is to be treated as a formal request

under the Environmental Information Regulations 2004 ("EIR"). A separate, structured EIR

request is enclosed for completeness.

4. The "No such RPS has been issued" answers

Mr XXXXX response to Questions 4, 5 and 8 was, in each case, identical:

"No such RPS has been issued."

That answer addresses none of the questions asked. The questions were forward-looking —

what would happen, what safeguards are in place, whether there is a sufficient basis for

departure from the regulator's determination. The present-tense answer leaves the door

wholly open to a future issuance and provides no comfort on any of the substantive points. I

therefore ask that you now answer the following:

4. Has the Re-Gen request of 17 February 2026 been formally determined by the Department? If yes, on what date, by whom, and on what reasoning?

5. If the request has not been formally determined, when will it be?

6. Will you commit, in writing, that no such RPS will be issued without prior referral to the

Executive Committee under sections 20(3) and (4) of the Northern Ireland Act 1998 and prior consultation with the Department for Infrastructure, Newry, Mourne and Down

District Council, and the statutory consultees to Permit P0610/23A/V2?

7. If an RPS were to be issued in any form, how, specifically, would the protections in

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Permit P0610/23A/V2 — the SRF-only restriction, the 538.7 m² footprint, the 5 m stackheight

limit, the contingency-only use, and NIEA's reserved power to remove the utility of external storage — be preserved?

5. The Ministerial Code reference

Mr XXXXXXXX response to Question 6 directs me to the Ministerial Code (Guidance for Ministers,

March 2020). With respect, that is the generic code governing the conduct of all Ministers; it

is not, and was never intended to be, a sector-specific protocol for the handling of direct

approaches by regulated operators to Ministers in respect of live, site-specific permits or

applications.

The fact that the Department has been unable to point to any such bespoke protocol is itself

a finding. There is, on the Department's own response, no published framework governing

how a direct approach by a regulated operator (such as Re-Gen's letter of 17 February 2026)

is to be handled, logged, declared, or reflected in the regulator's decision-making. I ask:

8. Whether you will commit to introducing such a protocol;

9. In its absence, what internal procedure was in fact followed in respect of the Re-Gen

letter of 17 February 2026; and

10. Whether the NIEA decision-makers in respect of Permit P0610/23A/V2 were aware of

the existence and contents of Re-Gen's letter to you at the time of their determination of 18 February 2026.

6. Reservation of position and onward steps

I reserve the right to refer the matters set out in this letter, and the Department's response to

it, to:

- the Agriculture, Environment and Rural Affairs Committee of the Northern Ireland Assembly;
- the Public Accounts Committee and the Northern Ireland Audit Office;
- the Information Commissioner's Office, in respect of the EIR request enclosed;
- the Northern Ireland Public Services Ombudsman, in respect of any maladministration arising from the matters described above; and
- such other elected representatives, regulators and media as I consider appropriate.

I also reserve the right to seek legal advice on the lawfulness of any RPS that may be issued

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in respect of the Derryboy Road site, including in light of sections 20(3), 20(4) and 28A of the Northern Ireland Act 1998 and the Padfield principle.

7. Response sought

I ask that you, personally, provide a substantive written response to the matters set out in

Sections 1, 2, 4 and 5 of this letter within 20 working days of the date hereof. The EIR request

enclosed at the appendix is subject to the statutory 20 working-day response period under

regulation 5(2) of the Environmental Information Regulations 2004.

Yours sincerely,

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